IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2949 OF 2004

Kishore Khatwani. ...Applicant
V/s.
State of Maharashtra & Ors. ...Respondents

Mr.S. Malik for Applicant.
Mr.R.D. Bhasin for Respondent No.2.
Mr.B.H. Mehta, A.P.P. for State.

CORAM : A.S. AGUIAR, J.
DATED : SEPTEMBER 3, 2004.

P.C. :-

1. Heard learned Advocates for the parties.

2. Applicant herein challenges the order dated 29th June, 2004 passed by Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, in Case No.183/S/2002 granting the application of the complainant to interpose a witness for the purpose of producing and proving certain documents while the complainant is being examined in chief.

3. Learned Advocate for the respondents has raised a preliminary objection as to maintainability of the

application as the impugned order is an interlocutory order and further that no prejudice is caused to the applicant in allowing a witness to be interposed. Learned Advocate for the respondents has contended that the practice of interposing a witness to produce documents while the complainant is in the box should not be permitted and in the normal course of practice the witness should be first examined, thereafter cross-examined and if necessary re-examined. Only thereafter the witness who is sought to be interposed, could have been allowed to be examined for producing and proving the documents on which the complainant is seeking to rely. Further, it was not necessary for the complainant to have the documents produced and proved by witness summoned to produce the document. The complainant could have relied upon the documents when he was being examined-in-chief, the document could have been subsequently produced through the relevant witness.

4. No doubt, the interposing of a witness for the purpose of production of documents which the complainant claims go to prove his case, should not be encouraged as

the same would cause prejudice to the other side, especially if numerous documents are to be produced through the witness interposed. In the present case, the learned trial Court has permitted the interposition of a witness who has been summoned by the Court pursuant to an application made in this behalf by the complainant.

5. In normal circumstances, such applications should not be allowed. However, since the trial Court has already passed the order and the witness has attended the Court pursuant to witness summons and the respondents have not been able to make out any case of prejudice having been caused to the respondents, we see no reason to interfere with the said order and accordingly reject the application, with a caveat that, the trial Court will not interpose any further witnesses till the conclusion of the evidence of the complainant who is in the box.

(A.S. AGUIAR, J.)